

COMMISSION ON JUDICIAL PERFORMANCE
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FOR RELEASE
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JUDICIAL PERFORMANCE COMMISSION INSTITUTES FORMAL
PROCEEDINGS CONCERNING JUDGE PETER J. MCBRIEN

The Commission on Judicial Performance has instituted formal proceedings to inquire into matters concerning Judge Peter J. McBrien of the Sacramento County Superior Court. The commencement of formal proceedings is not a determination of judicial misconduct. The formal proceedings concern allegations that the judge terminated a trial in a manner that deprived one party of due process and a fair trial, improperly threatened that party's attorney with contempt, displayed embroilment against the party by sending information to the party's employer without disclosing that he had done so, displayed impatience with that party's counsel and repeatedly threatened a mistrial; and it is alleged that the judge engaged in ex parte communications in two other cases. It is alleged that these actions constitute willful misconduct in office, persistent failure or inability to perform his duties, conduct prejudicial to the administration of justice that brings the judicial office into disrepute and improper action.

In accordance with the rules that govern Commission proceedings, a hearing will be conducted by Special Masters appointed by the Supreme Court. At the hearing, the parties will have an opportunity to introduce evidence and examine and cross-examine witnesses. Judge McBrien is represented by attorney James A. Murphy, Esq., of Murphy, Pearson, Bradley and Feeney in San Francisco, California.

Following completion of the hearing, the Special Masters will provide the Commission with a report containing findings with respect to the charges. The parties will have an opportunity to present their views on the report to the Commission through briefing and argument. If the Commission determines that charges are proved by clear and convincing evidence, it is empowered to remove, censure, publicly admonish, or privately discipline the judge. Charges that the Commission determines are not proved will be dismissed. A determination by the Commission to remove, censure, or admonish a judge is subject to discretionary review by the Supreme Court upon petition by the judge.

The Notice of Formal Proceedings is attached to this memorandum for your convenience. It is also available for public inspection at the Commission office. Judge McBrien's Answer to the Notice is due October 14, 2008. Upon filing, the judge's Answer will be made available for public inspection.

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The Commission is composed of three judges, two lawyers, and six public members. The Chairperson is the Honorable Frederick P. Horn of the Orange County Superior Court in Santa Ana, California.

Due to technical difficulties, the Commission's Web site is temporarily unavailable. If additional information about the Notice of Formal Proceedings is needed, contact the Commission's office.